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June 2, 2000

EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping
Rates in Rate Group 5 and to Implement a 3% Late Charge*
Docket No. 00-00041

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Response BellSouth Telecommunications, Inc. to the Consumer Advocate Division's "Objection to Report and Recommendation of Hearing Officer." Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,

Patrick W. Turner

PWT:ch
Enclosure

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BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Tariff Filing to Reduce Grouping Rates in Rate Group 5 and to Implement a 3% Late Charge*

Docket No. 00-00041

RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO THE CONSUMER ADVOCATE DIVISION'S
"OBJECTION TO REPORT AND RECOMMENDATION OF HEARING OFFICER"

On the afternoon of June 1, 2000, BellSouth Telecommunications, Inc. received a copy of the "Objection to Report and Recommendation of Hearing Officer"¹ the Consumer Advocate Division ("CAD") filed in this docket. As explained below, the CAD's Objections are without merit. The Tennessee Regulatory Authority, therefore, should reject those Objections and approve the Report and Recommendation of the Hearing Officer.

I. The CAD has been provided with over 1,000 pages of discovery in this docket.

The CAD claims that the Second Report and Recommendation "requires briefs which may be used to decide the rights, privileges, and duties of Tennessee consumers without benefit of the discovery of facts." See CAD's Objections at 1 (emphasis added). This statement could give the impression that the CAD has obtained little or no discovery from BellSouth, but that simply is not the case. Among the information BellSouth provided the CAD (or made available to the CAD for inspection and copying) on March 22, 2000 is the following: the number of

¹ Despite its title, this document actually attacks the May 26, 2000 "Second Report and Recommendation of Pre-Hearing Officer."

residential and business accounts in Tennessee which pay their bills after they are due; the approximate annual amounts that are overdue for consumer, state government, and business accounts and the estimated annual late payment charge revenue anticipated from these accounts; the last revenue lead-lag amount BellSouth developed for its Tennessee intrastate operations; a 26-page cost analysis supporting the proposed late payment charge; a 374-page 1990 lead-lag study; a 271-page 1993 lead-lag study plus subsequent updates; numerous Billing and Collection Services (B&C) contracts; and an explanation of the methods BellSouth uses to record uncollectible revenue. All told, the CAD has been provided well over a thousand pages of discovery in this docket.

II. Requiring briefs on the controlling legal issues prior to ruling on the discovery disputes in this docket is as appropriate as it is logical, and it certainly does not infringe upon the due process rights of any party to this docket.

The Pre-Hearing officer correctly noted that "the Authority's decision relative to [certain threshold] legal issues would determine the parties' need for certain discovery responses, which are currently in dispute." Second Report and Recommendation at 2. The Pre-Hearing Officer, therefore, "directed that briefs be filed addressing these threshold legal questions, and determined that resolution of outstanding discovery disputes be held in abeyance until all briefs are filed and the Authority addresses the legal questions raised in this matter." *Id.*² In an all-too-

² On May 30, 2000, both the CAD and BellSouth filed their initial briefs addressing these issues, and both parties are permitted to file reply briefs by June 5, 2000.

familiar refrain, however, the CAD erroneously complains that this logical and appropriate decision somehow violates the CAD's substantive and procedural due process rights. See CAD's Objection at ¶10. Nothing could be further from the truth.

As the Pre-Hearing Officer correctly noted, one of the threshold legal issues in this docket is whether BellSouth's proposed tariff constitutes an impermissible rate increase for basic local exchange service under Tenn. Code Ann. §65-5-209. The CAD simply cannot dispute that the language of the proposed tariff says what it says:

A late payment charge of three percent (3.00%) of the unpaid balance will be applied to each subscriber's bill (including amounts billed in accordance with the Company's Billing and Collections Services Tariff) when the previous month's bill has not been paid in full prior to the next billing date. Charges for payments that are overdue on state government accounts will be applied consistent with applicable state statutes.

See Proposed Tariff at A2.4.3.C; B2.4.1.E. Nor can the CAD dispute that the price regulation statutes, prior Orders of the TRA, and prior decisions by Tennessee courts all say what they say.³ This issue, therefore is a purely legal one involving the application of law to the undisputed language of the tariff. Moreover, although no discovery is necessary to address this purely legal issue, the CAD has already received more than a thousand pages of discovery responses from BellSouth in this

³ BellSouth's brief addressing this legal issue does not rely on "statements or allegations" as the CAD claims. See CAD's Objection at ¶9. Instead, BellSouth's brief simply applies the language of the price regulation statutes, prior Orders of the TRA, and prior decisions by Tennessee courts to the undisputed language of the proposed tariff.

docket. Holding the discovery disputes in this docket in abeyance pending the TRA's determination of this threshold legal issue, therefore, simply does not impinge on any of the CAD's substantive or procedural due process rights.

Similarly, the CAD has taken the position that actions the former Public Service Commission may have taken during the 1993 rate case involving BellSouth with regard to costs associated with late payments has some impact on BellSouth's tariff. In fact, many of the discovery disputes involve the relevance of this position.⁴ Whether any such action the Public Service Commission may have taken under rate-of-return regulation has any impact on BellSouth's current tariff filing under price regulation, however, is a purely legal issue. It makes great sense, therefore, to determine this legal issue prior to deciding whether BellSouth must respond to burdensome discovery requests regarding the Public Service Commission's actions during the 1993 rate case.

Finally, the CAD has questioned whether BellSouth may apply a late payment charge with regard to services provided by a third party and billed by BellSouth. In response to the CAD's discovery requests, BellSouth has directed the CAD to the applicable BellSouth tariffs governing this issue and has made copies of its current Billing and Collection contracts available for the CAD's inspection. See BellSouth's Response to CAD's Request No. 31. Once again, even though discovery is not

⁴ Without waiving its objections to the CAD's discovery requests that are related to this position, BellSouth has provided the CAD with well over 600 pages of documents regarding the lead-lag studies, including the lead-lag studies BellSouth presented during the 1993 rate case.

necessary for the CAD to brief this legal issue in compliance with the Second Report and Recommendation, the CAD has had ample discovery on this issue.

III. The CAD's reliance on the United Gas decision is misplaced.

Finally, the CAD's reliance on *CAD v. Tenn. Reg. Auth.*, 1997 WL 92079 (Tenn. Ct. App. March 5, 1997) ("the United Gas decision") is misplaced. In that case, the Court held that it was improper for the Public Service Commission to have considered an expert's report as evidence because the Commission had not given the CAD access to the evidence and because it had not given the CAD an opportunity to impeach the evidence. In this docket, however, the Pre-Hearing Officer has ordered to parties to present legal argument, not evidence. Moreover, the CAD has had full access to BellSouth's legal argument (it was hand-delivered to the CAD on the same day it was filed with the TRA), and the CAD has been given the opportunity to respond to BellSouth's legal argument by filing a Reply Brief. The United Gas decision, therefore, simply does not apply to the Second Report and Recommendation of Pre-Hearing Officer in this docket.

IV. Conclusion

For the reasons set forth above, the Tennessee Regulatory Authority should reject the CAD's "Objection to Report and Recommendation of Hearing Officer" and approve the Second Report and Recommendation of Pre-Hearing Officer.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in cursive script that reads "Patrick W. Turner". The signature is written in dark ink and is positioned above a horizontal line.

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CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2000, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☒ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight

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- ☐ Hand
- ☐ Mail
- ☒ Facsimile
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